

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PUBLIC UTILITIES COMMISSION)
OF OHIO,)

Petitioner,)

v.)

FEDERAL COMMUNICATIONS COMMISSION)
AND THE UNITED STATES OF AMERICA,)

Respondents,)

Case No. _____

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure, petitioner Public Utilities Commission of Ohio (“PUCO”), through undersigned counsel, hereby petitions this Court for review of the Report and Order and Further Notice of Proposed Rulemaking (*FCC Order*¹), issued by the Federal Communications Commission

¹ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011). The FCC Order is available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.doc.

(“FCC”) on November 18, 2011, and entered by publication in the Federal Register² on November 29, 2011, and in the proceeding captioned: *In the Matters of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51. A copy of the FCC *Order* is attached as Attachment B.³

This *Petition for Review* has been timely filed within 10 days of the agency order, and thus is filed subject to the procedures for multi-district litigation under 28 U.S.C. § 2112(a).

In response to Rule 26.1 of the Federal Rules of Appellate Procedure, the PUCO is not a private corporate entity or a subsidiary or affiliate of any publicly owned corporation nor does the PUCO have any financial interest in the outcome. The PUCO is a governmental agency of the State of Ohio charged with regulatory oversight of public utilities and telecommunication service providers.

² 76 Federal Register 73830 (November 29, 2011). Available online at: <http://www.gpo.gov/fdsys/pkg/FR-2011-11-29/pdf/2011-30378.pdf>.

³ The PUCO has provided for all service parties a link by which a copy of the FCC’s lengthy order may be readily obtained.

This Court has jurisdiction pursuant to 28 U.S.C. §2342(1) to enjoin, set aside, suspend, or determine the validity of all final orders of the FCC made reviewable by 47 U.S.C. § 402(a).

The FCC is a proper respondent under Rule 15(a) of the Federal Rules of Appellate Procedure, and the United States of America is a proper respondent under 28 U.S.C. § 2344.

Venue is proper in the United States Court of Appeals for the Sixth Circuit under 28 U.S.C. §2343. The PUCO has its principal office in Columbus, Ohio.

The PUCO was an active party in the FCC proceedings below where it filed several rounds of comments in the record, which resulted in the order for which the PUCO now seeks review by this Court. The PUCO's interest is adversely affected by the FCC's order because, among other things, it preempts authority to regulate intrastate access rates and reciprocal compensation rates that Congress has reserved to state commissions, like the PUCO, under the Federal Telecommunications Act of 1996.

The PUCO seeks an order and judgment that the FCC's order is arbitrary and capricious, 5 U.S.C. §706(2) (A), that it exceeds the FCC's jurisdiction, authority or power, 5 U.S.C. §706(2) (C), and that the order is otherwise not in accordance with law, 5 U.S.C. §706(2) (A).

Respectfully submitted,

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Dated: December 9, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have on this 9th day of December 2011 served a copy of the foregoing Petition for Review on each party listed below, via United States Postal Service, by first-class mail, in envelopes addressed as indicated on the attached pages, and I properly caused same to be deposited with the United States Postal Service.

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APPENDIX A

FULL TEXT OF THE FCC'S NOVEMBER 18, 2011 REPORT AND ORDER

WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45,
GN Docket No. 09-51

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